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09/746,270	12/20/2000	Michael Gargiulo	042933/316979	2797
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ALSTON & BIRD LLP			LEE, PHILIP C	
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CHARLOTTE, NC 28280-4000			PAPER NUMBER	
			2152	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/746,270

Applicant(s)

GARGIULO ET AL.

Examiner

Philip C. Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. This action is responsive to the amendment and remarks filed on May 4, 2007.
2. Claims 11-37 are presented for examination and claims 1-10 are canceled.
3. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior office action.

*Claim Rejections - 35 USC 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 33 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not disclose "processing element".

*Claim Rejections - 35 USC 101*

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 33 and 37 are rejected under 35 U.S.C. 101 because “An apparatus comprising server comprising a processing element” (i.e. software) does not include any functional structure of an apparatus. An apparatus comprising software is considered as program per se, which is not one of the categories of statutory subject matter.

*Claim Rejections - 35 USC 103*

8. Claims 11-37 are rejected under 35 U.S.C. 103(a) as being unpatentable Dusse et al, U.S. Patent 6,647,260 (hereinafter Dusse) in view of Routtenberg et al, U.S. Patent Application Publication 2002/0049717 (Routtenberg).

9. Dusse was cited in the previous office action.

10. As to claims 11, 31, and 36, Dusse discloses the invention substantially as claimed including a method for downloading media content sent over a communication system to a mobile station (Fig. 1., and abstract), the method comprising:

requesting media content by sending message with a header including a mobile identification number from said mobile station (provisioning request, and device identification information, col. 5, lines 6-10,15-16); receiving a message with said media content (content and related notifications, col. 7, lines 32-34, 60-62), a reply Universal Resource Locator (URL) identifying a server and a transaction identification at said mobile station (col. 7, lines 35-38);

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temporarily saving the media content within said mobile station and previewing at least a portion of the media on the mobile station (terms conditions and related information are pushed to the mobile station, hence, temporarily stored, until it is previewed and accepted, col. 8, lines 35-47), the previewed portion of said media content comprising a portion of said media content specifically requested (content and related notifications combined are considered as “media content” specifically requested, and related notifications are the portion being previewed; col. 7, lines 42-62; col. 8, lines 33-38); sending a primitive with the mobile identification number to the server identified by the URL from said mobile station (col. 6, lines 55-58; and col. 7, lines 35-40); and permanently saving the media content within the mobile station only when permission to save has been received (col. 7, lines 32-40; col. 8, lines 41-45).

11. Dusse does not teach specifically teach the previewed portion of said media content comprising a specifically requested portion of the media content. Routtenberg teaches a similar invention for downloading media content sent over a communication system to a mobile station (Fig. 2., and abstract), comprising:

- requesting media content by sending a message from said mobile station ([0040]);
- receiving a message with said media content at said mobile station ([0040]);
- temporarily saving said media content within said mobile station ([0040]) (save for limited access);

- previewing at least a portion of said media content on said mobile station, the previewed portion of said media content comprising a specifically requested portion of said media content ([0040])(reviewing the selected files);

sending a primitive from said mobile station to said server ([0042]) (communicates the finalize of the purchase to server); and

permanently saving said media content within said mobile station only when permission to save has been received from said server ([0042], [0048]) (when the server communicates the successful in billing the user for the purchased content files, the player permanently write (save) the content files).

12. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Dusse and Routtenberg because Routtenberg's teaching of previewing at least a portion of said media content on said mobile station, the previewed portion of said media content comprising a specifically requested portion of said media content would increase the customer satisfaction in Dusse's system by allowing selected downloaded content file to be reviewed prior to purchase of the selected download content.

13. Dusse and Routtenberg do not explicitly disclose a reply URL identifying a server and transaction identification as part of the received message. However, Dusse discloses that the content forwarded to the mobile station included information required to communicate with limited access commercial services devices (col. 7, lines 32-41). It would have been obvious to one skilled in the art at the time of the invention that such information would include a URL for "say" a billing service, as well as transaction identification in order to facilitate billing charges for accounting purposes.

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14. As to claims 12 and 32, Dusse and Routtenberg teach the invention substantially as claimed in claims 11 and 31 above. Dusse further disclose said message with said media content, said reply URL and said transaction identification conforms to a Multimedia Internet Mail Extension (MIME) format (col. 7, lines 32-36; and col. 8, lines 38-40).

15. As to claims 13 and 14, Dusse and Routtenberg teach the invention substantially as claimed in claim 11 above. Dusse further disclose sending a message from said mobile station to said server to update a usage record employing said reply URI, when said mobile station uses said media content (col. 5, lines 15-21; col. 6, lines 55-57; col. 7, lines 63-67; and col. 8, lines 1-4). It would have been obvious to one skilled in the art at the time of the invention that this billing activity should lead to user receiving a bill indicating use of said media content by said mobile station.

16. As to claim 15, Dusse and Routtenberg teach the invention substantially as claimed in claim 11 above. Dusse further disclose the communication system includes a secure connection between said mobile station and said server (col. 8, lines 5-12).

17. As to claims 16, 33, 34, and 35, the claim is rejected for the same reasons as claims 11-14 above. In addition, Dusse discloses a method of downloading media content to a mobile station (Fig. 1; and abstract), comprising: requesting "a ring tune deck" from a media server by entering a Universal Resource Locator (URL) thereof (col. 3, lines 28-30; and col. 5, lines 12-14); providing a media deck corresponding to said ring tune deck to said mobile station, selecting a

category from said media deck, providing specific links to ring tuned based on said category selected from said media deck, and selecting a ring tune from said specific links to said ring tunes (providing a menu and selecting a menu item out of another menu items is known in the art, e.g. col. 5, lines 40-65; and Fig. 2); generating a transaction number based on selecting "said ring tune" (content may include information to communicate with commercial server devices for billing, i.e. transaction information, col. 7, lines 35-40) and sending a file that conforms to a Multimedia Internet Mail Extension (MIME) format with "a ring tune" (col. 7, lines 32-36; and col. 8, lines 38-40) and a reply URL (content may include information to communicate with commercial server devices col. 7, lines 35-38) to said mobile station (col. 8, lines 34-40); verifying a format of said file and temporarily storing said file within said mobile station (terms, conditions and related information are pushed to the mobile station, hence, temporarily stored, until it is previewed and accepted, col. 8, lines 35-47); generating a primitive using said reply URL (col. 6, lines 55-58; and col. 7, lines 35-40) upon acceptance of said file and sending an acceptance message to said media server (col. 8, lines 41-51); creating a usage record from said acceptance message (col. 5, lines 15-21; col. 6, lines 55-57; col. 7, lines 63-67; and col. 8, lines 1-4); transmitting a confirmation reply message to said mobile station (776, Fig. 7C); permanently storing said file within said mobile station only when permission to save has been received (col. 7, lines 32-40; col. 8, lines 41-45), and reporting and updating said usage record upon use of "said ring tune" employing said reply URL ( col. 7, line 63 to col. 8, line 4).

18. Dusse does not teach specifically teach previewing at least a portion of said file on said mobile station, the previewed portion of said file being a specifically requested portion of said



file. Routtenberg teaches a similar invention for downloading media content sent over a communication system to a mobile station (Fig. 2., and abstract), comprising:

    previewing at least a portion of said file on said mobile station, the previewed portion of said file being a specifically requested portion of said file ([0040])(reviewing the selected files);  
and

    permanently storing said file within said mobile station only when permission to save has been received from the media server ([0042], [0048]) (when the server communicates the successful in billing he user for the purchased content files, the player permanently write (save) the content files).

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Dusse and Routtenberg because Routtenberg's teaching of previewing at least a portion of said file on said mobile station, the previewed portion of said file being a specifically requested portion of said file would increase the customer satisfaction in Dusse's system by allowing selected downloaded content file to be reviewed prior to purchase of the selected download content.

20. Dusse and Routtenberg do not explicitly disclose downloading a ring tune deck to select a ring tune. However, Dusse discloses downloading other service features such as provisioning services to the mobile station. It would have been obvious to one skilled in the art at the time of the invention that Dusse's method and system can be utilized to use a service server to download any type of service requested by a user including a ring tune deck for the selection of a ring tune.

21. As to claims 17-19, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose said URL is selected from a pre-stored list of URLs, viewing a plurality of URLs on a special menu of a display of said mobile station, and pressing a selected URL on a special menu of a display of said mobile station to invoke a browser thereof (col. 5, lines 50-65).

22. As to claim 20, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose the request includes a header with a mobile identification number of said mobile station (provisioning request, and device identification information, col. 5, lines 6-10,15-16).

23. As to claim 21, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose a carrier network routes said request to said media server through an Internet via a wireless application protocol gateway (Fig. 1; and col. 4, lines 27-43).

24. As to claim 22, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose said specific link to said ring tunes is shown on a display of said mobile station (col. 5, lines 40-65; and Fig. 2).

25. As to claim 23, Dusse and Routtenberg teach the invention substantially as claimed in claim 1 above. Dusse further disclose selecting said ring tune is performed by scrolling through

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said specific links to ring tunes using a scroll key and soft keys or depressing a key of said mobile station (col. 5, lines 40-65; and Fig. 2).

26. As to claim 24, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose the reply URL is programmably generated by said media server (content may include information to communicate with commercial server devices, col. 7, lines 35-38).

27. As to claim 25, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose generating a database record associated with said transaction number (col. 7, line 63 to col. 8, line 4).

28. As to claim 26, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose said file further includes said transaction number and a label tag (content may include information to communicate with commercial server devices col. 7, lines 35-38).

29. As to claim 27, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose discarding said file, or accepting said file following said act of verifying (col. 8, lines 34-45). As Dusse does not disclose downloading "a ring tune", he obviously does not disclose listening to said ring tune. However, approval by the user prior to

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implementation (col. 8, line 38) amount to previewing before acceptance for the pushed information, so if this information is audio information, then obviously "listening" is previewing.

30. As to claim 28, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose storing said usage record on a transaction server (col. 7, line 63 to col. 8, line 4).

31. As to claim 29, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse and Routtenberg do not necessarily disclose providing a credit based on selecting "said ring tune" or any service feature. However, it would have been obvious to one skilled in the art at the time of the invention that many of billing policies may be implemented in the billing server, obviously including providing a credit based on selecting a specific service feature.

32. As to claim 30, Dusse and Routtenberg teach the invention substantially as claimed in claim 16 above. Dusse further disclose updating a bill for said mobile station based upon said usage record (col. 7, line 63 to col. 8, line 4).

33. As per claim 37, Dusse teaches the invention substantially as claimed comprising a processing element configured to:

receive a request from a mobile station for media content by receiving a message with a header including a mobile identification number from the mobile station (provisioning request, and device identification information, col. 5, lines 6-10,15-16);

provide, to the mobile station, a message with the media content (content and related notifications, col. 7, lines 32-34, 60-62), a reply Universal Resource Locator (URL) identifying the server, and a transaction identification (col. 7, lines 35-38);

receive a primitive including a reply URL indicating acceptance of the media content by the mobile station following a previewing of a portion of the media content at the mobile station (content and related notifications combined are considered as "media content" specifically requested, and related notifications are the portion being previewed, col. 7, lines 42-62; col. 8, lines 33-38);

create a usage record from the received primitive indicating acceptance of the media content (col. 5, lines 15-21; col. 6, lines 55-57; col. 7, lines 63-67; and col. 8, lines 1-4); and

transmit a confirmation reply message (776, Fig. 7C) to thereby grant permission for the mobile station to permanently store the media content within the mobile station (col. 7, lines 32-40; col. 8, lines 41-45).

34. Dusse does not teach previewing of a specifically requested portion of he media content at he mobile station. Routtenberg teaches a similar invention comprising processing element configured to:

receive a request from a mobile station for media content ([0040]);

provide, to the mobile station, a message with the media content (0040));

receive a primitive indicating acceptance of the media content by the mobile station following a previewing of a specifically requested portion of the media content at the mobile station ([0042]) (communicates the finalize of the purchase to server);

create a usage record from the received primitive indication acceptance of the media content ([0042]) (e.g., record of billing a user); and

transmit a confirmation reply message to the mobile station to thereby grant permission for the mobile station to permanently store the media content within the mobile station ([0042], [0048]) (when the server communicates the successful in billing the user for the purchased content files, the player permanently write (save) the content files).

35. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Dusse and Routtenberg because Routtenberg's teaching of previewing at least a portion of said media content on said mobile station, the previewed portion of said media content comprising a specifically requested portion of said media content would increase the customer satisfaction in Dusse's system by allowing selected downloaded content file to be reviewed prior to purchase of the selected download content.

36. Dusse and Routtenberg do not explicitly disclose a reply URL identifying a server and transaction identification as part of the received message. However, Dusse discloses that the content forwarded to the mobile station included information required to communicate with limited access commercial services devices (col. 7, lines 32-41). It would have been obvious to one skilled in the art at the time of the invention that such information would include a URL for

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"say" a billing service, as well as transaction identification in order to facilitate billing charges for accounting purposes.

37. Applicant's arguments with respect to claims 11-37, filed 05/04/07, have been fully considered but are moot in view of new ground(s) of rejection(s).

38. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

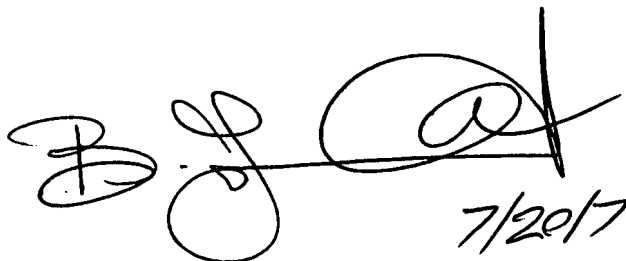
39. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip C Lee whose telephone number is (571)272-3967. The examiner can normally be reached on 8 AM TO 5:30 PM Monday to Thursday and every other Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number

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for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

P.L.

A handwritten signature in black ink, consisting of stylized cursive letters, followed by a date stamp.

7/20/17

BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER